

MAR 23 1988

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

MAR 09 1988

URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY  
CERTIFIED MAIL: RETURN RECEIPT REQUESTED  
GENERAL NOTICE LETTER AND INFORMATION REQUEST

HANNAH MARINE  
361 S. FRONTAGE ROAD  
BURR RIDGE, IL

Re: Ninth Avenue Dump, Gary, Indiana  
U.S. Scrap, Chicago, Illinois

US EPA RECORDS CENTER REGION 5



410360

Dear Sir or Madam:

NOTICE OF POTENTIAL LIABILITY

This letter is to notify you of potential liability which your company may incur or may have incurred with respect to the above-referenced Sites, to make a formal demand for reimbursement of the costs, including interest thereon, that have been incurred in response to the environmental problems at the Sites, and to notify you of forthcoming cleanup response activities at the Sites which you will be asked at a later date to perform or finance.

The United States Environmental Protection Agency ("U.S. EPA") has documented the release or threatened release of hazardous substances, pollutants and contaminants at the above-referenced Sites. U.S. EPA has spent and is considering spending public funds on actions to investigate and control such releases or threatened releases at the Sites. Unless U.S. EPA reaches an agreement under which a responsible party or parties will properly perform or finance such actions, U.S. EPA will itself perform these actions pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq. (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (1986) (SARA).

Under Section 106(a) of CERCLA, Section 107(a) of CERCLA, U.S.C. §§9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. §6973 (RCRA), and other laws, responsible parties may be obligated to implement relief actions deemed necessary by EPA to protect the public

health, welfare or environment and may be liable for all costs incurred by the government in responding to any release or threatened release at the Sites. Such costs may include, but are not limited to, expenditures for investigation, planning, response and enforcement activities.

Responsible parties under CERCLA include current and former owners and operators of the Sites as well as persons who arranged for disposal of hazardous substances found at the Sites, or persons who accepted hazardous substances for transport to the Sites.

U.S. EPA has evaluated a large body of evidence in connection with its investigation of the Sites, including business records produced by the operator of the Sites.

Based on this evidence, U.S. EPA has information indicating that you are a potentially responsible party with respect to these Sites. Specifically, U.S. EPA has reason to believe that you did, by contract, agreement, or otherwise, arrange for the disposal, treatment, or transportation for disposal or treatment of hazardous substances found at the Sites. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a potentially responsible party, to reimburse U.S. EPA for the costs incurred to date and to voluntarily perform or finance the response activities described below that U.S. EPA has determined are required at the Sites.

#### DEMAND FOR PAYMENT OF COSTS INCURRED TO DATE

In accordance with CERCLA and other authorities, U.S. EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Sites. These response actions include the following:

U.S. Scrap Site In the spring of 1986 an emergency removal was undertaken at the Site to extinguish an underground fire. Liquid wastes stored in several large grain elevators on the property were also cleaned. A further site investigation is currently underway for the purpose of determining the extent of soil and groundwater contamination from the dumping of liquid wastes into large burial pits. According to a cost summary dated March 11, 1987, approximately \$800,000 had been expended by the federal government at the U.S. Scrap Site as of that date.

Ninth Avenue Site Since the Indiana State Board of Health first learned of potential problems at the Ninth Avenue Site in 1975, there has been a long history of response actions taken by private, local, State and Federal parties at the Site. The Site operator conducted some preliminary cleanup in the form of drum removal and placing cover at the Site in the 1970's. The federal government has financed extensive studies and sampling at the site through the Army Corp of Engineers. Field work for a Remedial Investigation/Feasibility Study has been

completed, with a final report due in the spring of 1988. Federal monies expended at the Site to date total over \$2.2 million.

The Agency anticipates expending additional funds for response activities at the Sites under the authority of CERCLA and other laws, including those response activities described below. In accordance with Section 107(a)(4)(D) of CERCLA, as amended by Section 107(b) of SARA, demand is hereby made for payment of the above amounts plus any and all interest authorized to be recovered under that Section or under any other provisions of law. Demand is also hereby made under these authorities for payment of interest on all future costs that U.S. EPA may accrue in regard to the Sites.

#### FORTHCOMING RESPONSE ACTIVITIES AT THE SITES

U.S. EPA is planning to conduct the following studies and/or activities at the Sites:

U.S. Scrap Site U.S. EPA plans to conduct further site investigation for the purpose of determining the extent of soil and groundwater contamination at the Site.

Ninth Avenue Site U.S. EPA plans to complete a Remedial Investigation/ Feasibility Study of the Site in the spring of 1988. A Record of Decision on an operable unit to address a floating hydrocarbon layer on the water table surface is scheduled to be signed in July or August, 1988, with design and implementation of the remedial action selected and approved by U.S. EPA scheduled to occur shortly thereafter. A Record of Decision for the remainder of the site is scheduled for the early fall of 1988.

In addition to those enumerated above, U.S. EPA may, pursuant to its authorities under CERCLA and other laws, decide that other clean-up activities are necessary to protect public health, welfare or the environment.

#### TIMING AND FORM OF RESPONSES TO THIS LETTER

At an appropriate point in the future, U.S. EPA intends to send an additional notice that one or more of the above activities is pending and that your cooperation is being requested to negotiate the terms of an agreement to perform or finance those activities. In the interim, as a potentially responsible party, you should notify U.S. EPA in writing within 5 days from receipt of this letter of your willingness to perform or finance the activities described above.

Your letter should indicate the appropriate name, address, and telephone number for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary clean-up action, or involved in a lawsuit regarding these Sites, you should continue such activities as you see fit. This letter is not intended to advise you or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

Your response letter should be sent to:

Ms. Susan Swales SHE-12  
U.S. EPA - Region V  
Waste Management Division  
CERCLA Enforcement Section  
230 South Dearborn Street  
Chicago, Illinois 60604

If you have an attorney representing you in this matter, please direct his or her questions to Edward Kowalski of the U.S. EPA Office of Regional Counsel at (312) 886-6632.

#### INFORMATION TO ASSIST RESPONSIBLE PARTIES

U.S. EPA would like to encourage good faith negotiations between you and the Agency and among you and other parties potentially responsible for the Sites. To assist responsible parties in preparing a proposal and in negotiating with U.S. EPA concerning this matter, U.S. EPA is providing the following information:

A list of the names and addresses of potentially responsible parties to whom this notification is being provided. This list represents U.S. EPA's preliminary findings on the identities of potentially responsible parties. Inclusion on or exclusion from the list does not constitute a final determination by the Agency concerning the liability of any party for the hazard or contamination at the Sites.

Please be advised that U.S. EPA has determined that this list is an investigatory record compiled for law enforcement purposes. The public release of this record may interfere with enforcement proceedings and disclose investigatory techniques and procedures. As such, the record is exempt from mandatory disclosure under the investigatory records exemption of the Freedom of Information Act, 5 U.S.C. §552(b)(7). Nevertheless, a limited disclosure of this record is being made in order to further the settlement

negotiations and to encourage communication among the parties. This record is being provided as a discretionary release of information to the potentially responsible parties, and it should not be disclosed further or made publicly available in any context unless you are given prior approval by U.S. EPA.

#### INFORMATION REQUEST TO YOU

The U.S. EPA is seeking to obtain certain information from you pursuant to its authority under Section 104 of CERCLA, 42 U.S.C. §9604, and Section 3007 of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6927, for the purpose of enforcing CERCLA and RCRA and for the purposes of assisting in determining the need for response to a release of hazardous substance(s) under CERCLA. The Administrator of the U.S. EPA has the authority to require any person who generates, stores, treats, transports, disposes arranges for the disposal of, or otherwise handles hazardous wastes and hazardous substances, as those terms are defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and Section 101(14) of CERCLA, 42 U.S.C. §9601(14) to furnish the U.S. EPA with information related to such activities. Pursuant to these statutory provisions, you are hereby requested to submit the information requested below.

1. Identify all persons, including yourself, who may have arranged for disposal or treatment or arranged for transportation for disposal or treatment of waste materials, including hazardous substances, at the Sites or to the Sites, or who may have arranged for disposal through any of the following persons or organizations: 1) Steve Martell, 2) U.S. Scrap Corp., 3) Liquid Engineering, 4) U.S. Drum Corp., 5) U.S. Drum Disposal, 6) David Head. In addition, identify the following:
  - a. The persons with whom you or such other person made such arrangements;
  - b. Every date on which such arrangements took place;
  - c. For each transaction, the nature of the waste material or hazardous substance, including the chemical content, characteristics, physical state (e.g., solid, liquid), and the process for which the substance was used or the process which generated the substance;
  - d. The owner of the waste materials or hazardous substances so accepted or transported;
  - e. The quantity of the waste materials or hazardous substances involved (weight or volume) in each transaction and the total quantity for all transactions;
  - f. All tests, analyses, and analytical results concerning the waste materials;

- g. The person(s) who selected the Sites as the place to which the waste materials or hazardous substances were to be transported;
  - h. The amount paid in connection with each transaction, the method of payment, and the identity of the person from whom payment was received;
  - i. Where the person identified in g., above, intended to have such hazardous substances or waste materials transported and all evidence of this intent;
  - j. Whether the waste materials or hazardous substances involved in each transaction were transhipped through, or were stored or held at, any intermediate site prior to final treatment or disposal;
  - k. What was actually done to the waste materials or hazardous substances once they were brought to the Sites;
  - l. The final disposition of each of the waste materials or hazardous substances involved in such transactions.
2. Provide copies of all shipping documents, or other business documents including receipts relating to the transportation, storage and/or disposal of waste material at the above referenced Sites or with the following businesses and persons:
    - U.S. Scrap Corp.
    - Liquid Engineering
    - U.S. Drum Corp.
    - U.S. Drum Disposal
    - Steve Martell
    - David Head
  3. Provide a list and description of all liability insurance coverage that is or was carried by you, including any self-insurance provisions that related to hazardous substances and/or the Sites identified above:

The relevant time period for this information is 1965 to 1977, inclusive.

Your response to this information request should be sent to:

Ms. Susan Swales SHE-12  
U.S. EPA - Region V  
Waste Management Division  
CERCLA Enforcement Section  
230 South Dearborn Street  
Chicago, Illinois 60604

The information sought pursuant to this request pertains to any and all information in your possession, custody or control relating to the operation of the above-referenced Sites and to the transportation, storage, and/or disposal of waste materials or the generation of waste materials which were ultimately disposed of or offered for disposal at the Ninth Ave. Dump, Gary Indiana Site and/ or the U.S. Scrap Site in Chicago, Illinois.

For purposes of this information request, "shipping documents" shall mean all contracts, agreements, purchase orders, requisitions, pick-up or delivery tickets, customs forms, freight bills, shipping memoranda, order forms, weight tickets, work orders, manifests, shipping orders, packing slips, bills of lading, invoices, bills and any other similar documents that evidence transactions of any kind involving shipment, or the arrangement for shipment, of waste materials to, through, or from, the above-referenced Sites or to, through, or from the above-referenced individuals or organizations. "Waste materials" shall mean hazardous substances, solid wastes and hazardous wastes, and other materials which may or may not contain pollutants or contaminants, and shall include reclaimed and off-specification materials of any kind.

The information sought herein must be sent to U.S. EPA within fifteen (15) calendar days of your receipt of this letter. Under Section 3008 of RCRA, 42 U.S.C. §6928, and under Section 104 of CERCLA, 42 U.S.C. §9604, failure to comply with this request or to justify adequately such failure to respond to this request may result in an order requiring compliance or in a civil action for appropriate relief. These provisions also provide for civil penalties of up to \$25,000 per day for each day of non-compliance. Failure to comply with this request may also result in a civil enforcement action being brought against you by U.S. EPA under Section 104 of CERCLA, 42 U.S.C. §9604.

The information requested herein must be provided notwithstanding its possible characterization as confidential information or trade secrets. You may request, however, that any such information be handled as confidential business information. A request for confidential treatment must be made when the information is provided, since any information not so identified will not be accorded this protection by the U.S. EPA. Information claimed as confidential will be handled in accordance with the provisions of 40 C.F.R. Part 2.

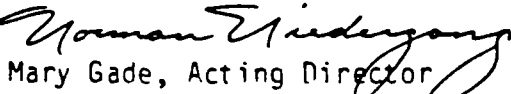
The written statements submitted pursuant to this request must be notarized and submitted under an authorized signature certifying that all information contained therein is true and accurate to the best of the signatory's knowledge and belief. Moreover, any documents submitted to Region V pursuant to this information request should be certified as true and authentic to the best of the signatory's knowledge and belief. Should

the signatory find at any time after the submittal of the requested information that any portion of the submitted information is false or incomplete, the signatory should so notify the U.S. EPA. If any answer certified as true should be found to be untrue, the signatory can and may be prosecuted pursuant to 18 U.S.C. §1001.

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final agency position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by conditions at the Sites, U.S. EPA urges that immediate attention and a prompt response be given to this letter.

By copy of this letter, U.S. EPA is notifying the States of Illinois and Indiana of our intent to perform or enter into negotiations for the performance or financing or response actions at the Sites.

Sincerely yours,

  
for Mary Gade, Acting Director  
Office of Superfund



KATTEN MUCHIN & ZAVIS  
525 WEST MONROE STREET • SUITE 1600  
CHICAGO ILLINOIS 60606-3693

ES

**First Class Mail**  
**First Class Mail**

**KATTEN MUCHIN & ZAVIS**

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

525 WEST MONROE STREET • SUITE 1600

CHICAGO, ILLINOIS 60606-3693

Mr. Brad Bradley  
(5HE-12)  
Waste Management Division  
USEPA - Region V  
230 South Dearborn Street  
Chicago, IL 60604